

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 26, 2007

Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

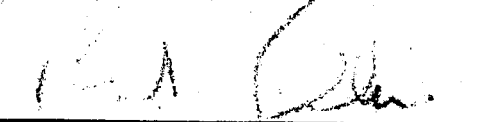
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2094 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Senator John Carona, Chair


Representative Fred Hill, Chair

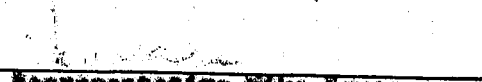

Senator Craig Eaten


Representative Joseph "Joe" Deshotel


Senator Rodney Ellis


Representative Jim Jackson


Senator Jeff Wentworth


Representative Mike Kruseo


On the part of the Senate
Senator John Whitmire


On the part of the House
Representative Larry Phillips

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2094

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the towing and storage of vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. LICENSING AND REGULATION OF TOWING AND VEHICLE STORAGE

SECTION 1.01. Sections 2303.002(2), (3), and (4),
Occupations Code, are amended to read as follows:

(2) "Commission" means the Texas ~~[Transportation]~~
Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of
Licensing and Regulation ~~[Transportation]~~.

(4) "Executive director ~~[Director]~~" means the
executive director of the department ~~[or a person designated by the
executive director who is not below the rank of division or special
office director]~~.

SECTION 1.02. Section 2303.051, Occupations Code, is
amended to read as follows:

Sec. 2303.051. RULEMAKING: LICENSE REQUIREMENTS ~~[+~~
~~SANCTIONS]~~. The commission shall adopt rules that:

(1) establish the requirements for a person to be
licensed to operate a vehicle storage facility to ensure that the
facility maintains adequate standards for the care of stored
vehicles; ~~[and]~~

(2) relate to the administrative sanctions that may be
imposed on a person licensed under this chapter;

1 (3) govern the administration of this chapter.

2 SECTION 1.03. Subchapter B, Chapter 2303, Occupations Code,
3 is amended by adding Sections 2303.055, 2303.056, 2303.057, and
4 2303.058 to read as follows:

5 Sec. 2303.055. EXAMINATION OF CRIMINAL CONVICTION. The
6 department may conduct an examination of any criminal conviction of
7 an applicant, including by obtaining any criminal history record
8 information permitted by law.

9 Sec. 2303.056. PERIODIC AND RISK-BASED INSPECTIONS. (a)
10 The department may enter and inspect at any time during business
11 hours:

12 (1) the place of business of any person regulated
13 under this chapter; or

14 (2) any place in which the department has reasonable
15 cause to believe that a license holder is in violation of this
16 chapter or in violation of a rule or order of the commission or
17 executive director.

18 (b) At least once every two years, the department shall
19 inspect a vehicle storage facility that holds a license under this
20 chapter.

21 (c) The department shall conduct additional inspections
22 based on a schedule of risk-based inspections using the following
23 criteria:

24 (1) the type and nature of the vehicle storage
25 facility;

26 (2) the inspection history of the vehicle storage
27 facility;

1 (3) any history of violations involving the vehicle
2 storage facility; and

3 (4) any other factor determined by the commission by
4 rule.

5 (d) The vehicle storage facility shall pay a fee for each
6 risk-based inspection performed under Subsection (c). The
7 commission by rule shall set the amount of the fee.

8 Sec. 2303.057. PERSONNEL. The department may employ
9 personnel necessary to administer and enforce this chapter.

10 Sec. 2303.058. ADVISORY BOARD. The Towing and Storage
11 Advisory Board under Chapter 2308 shall advise the commission in
12 adopting vehicle storage rules under this chapter.

13 SECTION 1.04. The heading to Section 2303.101, Occupations
14 Code, is amended to read as follows:

15 Sec. 2303.101. FACILITY LICENSE REQUIRED.

16 SECTION 1.05. Subchapter C, Chapter 2303, Occupations Code,
17 is amended by adding Section 2303.1015 to read as follows:

18 Sec. 2303.1015. EMPLOYEE LICENSE REQUIRED. (a) A person
19 may not work at a vehicle storage facility unless the person holds a
20 license issued under this chapter.

21 (b) The commission shall adopt rules governing the
22 application for and issuance of a license under this section.

23 SECTION 1.06. Sections 2303.102(a) and (b), Occupations
24 Code, are amended to read as follows:

25 (a) The commission by rule shall determine the types of
26 information to be included in an application for a license under
27 this chapter on a form prescribed by the executive director.

1 (b) The rules adopted ~~[by the commission]~~ under this section
2 must require an ~~[the]~~ application for a facility license ~~[to be made~~
3 ~~under oath and]~~ to list:

4 (1) the name and address of each partner, if the
5 applicant is a partnership; and

6 (2) the name and address of the president, secretary,
7 and treasurer of the corporation, if the applicant is a corporation
8 ~~[, and~~

9 ~~[(3) each conviction of a felony, or of a misdemeanor~~
10 ~~punishable by confinement in jail or by a fine exceeding \$200, that~~
11 ~~was obtained against the applicant or a partner or officer of the~~
12 ~~applicant in the three years preceding the date of application].~~

13 SECTION 1.07. Section 2303.151(c), Occupations Code, is
14 amended to read as follows:

15 (c) It is a defense to an action initiated by the department
16 for a violation of this section that the operator of the facility
17 unsuccessfully attempted in writing or electronically to obtain
18 information from the governmental entity with which the vehicle is
19 registered.

20 SECTION 1.08. Section 2303.155(b), Occupations Code, is
21 amended to read as follows:

22 (b) The operator of a vehicle storage facility or
23 governmental vehicle storage facility may charge the owner of a
24 vehicle stored or parked at the facility:

25 (1) a notification fee set in a reasonable amount for
26 providing notice under this subchapter, including notice under
27 Section 2303.154(c);

(2) an impoundment fee of \$20 for any action that:

(A) is taken by or at the direction of the owner or operator of the facility; and

(B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility;

(3) a daily storage fee of:

(A) not less than \$5 and not more than \$20 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet; or

(B) \$35 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet; ~~[and]~~

(4) any fee that is required to be submitted to a law enforcement agency, the agency's authorized agent, or a governmental entity; and

(5) a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

SECTION 1.09. Subchapter D, Chapter 2303, Occupations Code, is amended by adding Section 2303.160 to read as follows:

Sec. 2303.160. DRUG TESTING OF EMPLOYEES. (a) A license holder shall establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. A license holder that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

1 (b) The commission by rule shall adopt a model drug testing
2 policy for use by license holders. The model drug testing policy
3 must be designed to ensure the safety of the public through
4 appropriate drug testing and to protect the rights of employees.
5 The model drug testing policy must:

6 (1) require at least one scheduled drug test each year
7 for each employee of a vehicle storage facility who has direct
8 contact with the public; and

9 (2) authorize random, unannounced drug testing for
10 employees described by Subdivision (1).

11 SECTION 1.10. Section 2303.302, Occupations Code, is
12 amended to read as follows:

13 Sec. 2303.302. CRIMINAL PENALTIES. (a) A person commits an
14 offense if the person:

15 (1) violates the licensing requirements of ~~[operates a~~
16 ~~vehicle storage facility for which a license has not been issued~~
17 ~~under]~~ this chapter; or

18 (2) employs an individual who does not hold an
19 appropriate license required by ~~[violates a rule adopted by the~~
20 ~~commission under]~~ this chapter.

21 (b) An offense under this section is a Class C misdemeanor
22 ~~[punishable by a fine of not less than \$200 and not more than \$500].~~

23 ~~[(c) A person commits a separate offense for each day the~~
24 ~~person violates this section.]~~

25 SECTION 1.11. Subchapter G, Chapter 2303, Occupations Code,
26 is amended by adding Sections 2303.304 and 2303.305 to read as
27 follows:

1 Sec. 2303.304. ADMINISTRATIVE PENALTY. (a) The commission
2 may impose an administrative penalty on a person under Subchapter
3 F, Chapter 51, regardless of whether the person holds a
4 registration, permit, or license under this chapter, if the person
5 violates:

6 (1) this chapter or a rule adopted under this chapter;
7 or
8 (2) a rule or order of the executive director or
9 commission.

10 (b) An administrative penalty may not be imposed unless the
11 person charged with a violation is provided the opportunity for a
12 hearing.

13 Sec. 2303.305. CEASE AND DESIST ORDER; INJUNCTION; CIVIL
14 PENALTY. (a) The executive director may issue a cease and desist
15 order as necessary to enforce this chapter if the executive
16 director determines that the action is necessary to prevent a
17 violation of this chapter and to protect public health and safety.

18 (b) The attorney general or executive director may
19 institute an action for an injunction or a civil penalty under this
20 chapter as provided by Section 51.352.

21 SECTION 1.12. Subtitle A, Title 14, Occupations Code, is
22 amended by adding Chapter 2308 to read as follows:

23 CHAPTER 2308. VEHICLE TOWING

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 2308.001. SHORT TITLE. This chapter may be cited as
26 the Texas Towing Act.

27 Sec. 2308.002. DEFINITIONS. In this chapter:

1 (1) "Advisory board" means the Towing and Storage
2 Advisory Board.

3 (2) "Commission" means the Texas Commission of
4 Licensing and Regulation.

5 (3) "Consent tow" means any tow of a motor vehicle
6 initiated by the owner or operator of the vehicle or by a person who
7 has possession, custody, or control of the vehicle. The term does
8 not include a tow of a motor vehicle initiated by a peace officer
9 investigating a traffic accident or a traffic incident that
10 involves the vehicle.

11 (4) "Department" means the Texas Department of
12 Licensing and Regulation.

13 (5) "Driver's license" has the meaning assigned by
14 Section 521.001, Transportation Code.

15 (6) "Nonconsent tow" means any tow of a motor vehicle
16 that is not a consent tow.

17 (7) "Parking facility" means public or private
18 property used, wholly or partly, for restricted or paid vehicle
19 parking. The term includes:

20 (A) a restricted space on a portion of an
21 otherwise unrestricted parking facility; and

22 (B) a commercial parking lot, a parking garage,
23 and a parking area serving or adjacent to a business, church,
24 school, home, apartment complex, property governed by a property
25 owners' association, or government-owned property leased to a
26 private person, including:

27 (i) a portion of the right-of-way of a

1 public roadway that is leased by a governmental entity to the
2 parking facility owner; and

3 (ii) the area between the facility's
4 property line abutting a county or municipal public roadway and the
5 center line of the roadway's drainage way or the curb of the
6 roadway, whichever is farther from the facility's property line.

7 (8) "Parking facility owner" means:

8 (A) an owner or operator of a parking facility,
9 including a lessee, employee, or agent of an owner or operator;

10 (B) a property owners' association having
11 control under a dedicatory instrument, as that term is defined in
12 Section 202.001, Property Code, over assigned or unassigned parking
13 areas; or

14 (C) a property owner having an exclusive right
15 under a dedicatory instrument, as that term is defined in Section
16 202.001, Property Code, to use a parking space.

17 (9) "Property owners' association" has the meaning
18 assigned by Section 202.001, Property Code.

19 (10) "Public roadway" means a public street, alley,
20 road, right-of-way, or other public way, including paved and
21 unpaved portions of the right-of-way.

22 (11) "Tow truck" means a motor vehicle, including a
23 wrecker, equipped with a mechanical device used to tow, winch, or
24 otherwise move another motor vehicle.

25 (12) "Towing company" means an individual,
26 association, corporation, or other legal entity that controls,
27 operates, or directs the operation of one or more tow trucks over a

1 public roadway in this state but does not include a political
2 subdivision of the state.

3 (13) "Unauthorized vehicle" means a vehicle parked,
4 stored, or located on a parking facility without the consent of the
5 parking facility owner.

6 (14) "Vehicle" means a device in, on, or by which a
7 person or property may be transported on a public roadway. The term
8 includes an operable or inoperable automobile, truck, motorcycle,
9 recreational vehicle, or trailer but does not include a device
10 moved by human power or used exclusively on a stationary rail or
11 track.

12 (15) "Vehicle owner" means a person:

13 (A) named as the purchaser or transferee in the
14 certificate of title issued for the vehicle under Chapter 501,
15 Transportation Code;

16 (B) in whose name the vehicle is registered under
17 Chapter 502, Transportation Code, or a member of the person's
18 immediate family;

19 (C) who holds the vehicle through a lease
20 agreement;

21 (D) who is an unrecorded lienholder entitled to
22 possess the vehicle under the terms of a chattel mortgage; or

23 (E) who is a lienholder holding an affidavit of
24 repossession and entitled to repossess the vehicle.

25 (16) "Vehicle storage facility" means a vehicle
26 storage facility, as defined by Section 2303.002, that is operated
27 by a person who holds a license issued under Chapter 2303 to operate

1 the facility.

2 Sec. 2308.003. STUDY OF NONCONSENT TOWING FEES. (a) The
3 department shall study the fees charged by license and permit
4 holders for nonconsent tows, compliance of license and permit
5 holders with local regulations governing towing fees, and consumer
6 complaints related to fees for nonconsent tows. Not later than
7 January 1, 2009, the department shall report to the legislature the
8 findings of the study, including any recommendations for state
9 regulation of towing fees.

10 (b) This section expires September 1, 2009.

11 [Sections 2308.004-2308.050 reserved for expansion]

12 SUBCHAPTER B. ADVISORY BOARD

13 Sec. 2308.051. TOWING AND STORAGE ADVISORY BOARD. (a) The
14 advisory board consists of the following members appointed by the
15 presiding officer of the commission with the approval of the
16 commission:

17 (1) one representative of a towing company operating
18 in a county with a population of less than one million;

19 (2) one representative of a towing company operating
20 in a county with a population of one million or more;

21 (3) one owner of a vehicle storage facility located in
22 a county with a population of less than one million;

23 (4) one owner of a vehicle storage facility located in
24 a county with a population of one million or more;

25 (5) one parking facility owner;

26 (6) one law enforcement officer from a county with a
27 population of less than one million;

1 (7) one law enforcement officer from a county with a
2 population of one million or more; and

3 (8) one representative of property and casualty
4 insurers who write automobile insurance in this state.

5 (b) The advisory board must include representation for each
6 classification of towing.

7 (c) An appointment to the advisory board shall be made
8 without regard to the race, color, disability, sex, religion, age,
9 or national origin of the appointee.

10 Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board
11 members serve terms of six years, with the terms of two or three
12 members, as appropriate, expiring on February 1 of each
13 odd-numbered year.

14 (b) A member may not serve more than two full consecutive
15 terms.

16 (c) If a vacancy occurs during a term, the presiding officer
17 of the commission shall appoint a replacement who meets the
18 qualifications of the vacated position to serve for the remainder
19 of the term.

20 Sec. 2308.053. PRESIDING OFFICER. The presiding officer of
21 the commission shall appoint one of the advisory board members to
22 serve as presiding officer of the advisory board for a term of one
23 year. The presiding officer of the advisory board may vote on any
24 matter before the advisory board.

25 Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES.
26 Advisory board members may not receive compensation but are
27 entitled to reimbursement for actual and necessary expenses

1 incurred in performing the functions of the advisory board, subject
2 to the General Appropriations Act.

3 Sec. 2308.055. MEETINGS. The advisory board shall meet
4 twice annually and may meet at other times at the call of the
5 presiding officer of the commission or the executive director.

6 Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive
7 director or commission, as appropriate, may take action as
8 necessary to administer and enforce this chapter.

9 Sec. 2308.057. RULES. (a) The commission shall adopt
10 rules for permitting tow trucks and licensing towing operators and
11 towing companies.

12 (b) The commission by rule shall adopt standards of conduct
13 for license and permit holders under this chapter.

14 Sec. 2308.058. FEES. The commission shall establish and
15 collect reasonable and necessary fees in amounts sufficient to
16 cover the costs of administering this chapter.

17 Sec. 2308.059. PERIODIC AND RISK-BASED INSPECTIONS. (a)
18 The department may enter and inspect at any time during business
19 hours:

20 (1) the place of business of any person regulated
21 under this chapter; or

22 (2) any place in which the department has reasonable
23 cause to believe that a license or permit holder is in violation of
24 this chapter or in violation of a rule or order of the commission or
25 executive director.

26 (b) The department shall conduct additional inspections
27 based on a schedule of risk-based inspections using the following

1 criteria:

2 (1) the type and nature of the towing company or
3 operator;

4 (2) the inspection history;

5 (3) any history of complaints involving the towing
6 company or operator; and

7 (4) any other factor determined by the commission by
8 rule.

9 (c) The towing company shall pay a fee for each risk-based
10 inspection performed under this section. The commission by rule
11 shall set the amount of the fee.

12 (d) In conducting an inspection under this section, the
13 department may inspect a vehicle, a facility, business records, or
14 any other place or thing reasonably required to enforce this
15 chapter or a rule or order adopted under this chapter.

16 Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The
17 advisory board shall provide advice and recommendations to the
18 department on technical matters relevant to the administration and
19 enforcement of this chapter, including examination content,
20 licensing standards, and continuing education requirements.

21 Sec. 2308.061. PERSONNEL. The department may employ
22 personnel necessary to administer and enforce this chapter.

23 [Sections 2308.062-2308.100 reserved for expansion]

24 SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

25 Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used
26 for consent towing or nonconsent towing on a public roadway in this
27 state unless an appropriate permit has been issued for the tow truck

1 under this subchapter. Each tow truck requires a separate permit.

2 Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant
3 for a permit under this subchapter must submit to the department:

4 (1) a completed application on a form prescribed by
5 the executive director;

6 (2) evidence of insurance or financial responsibility
7 required under this subchapter;

8 (3) the required fees; and

9 (4) any other information required by the executive
10 director.

11 (b) The department may conduct an examination of any
12 criminal conviction of an applicant, including by obtaining any
13 criminal history record information permitted by law.

14 Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING
15 PERMIT. (a) An incident management towing permit is required for a
16 tow truck used to perform any nonconsent tow initiated by a peace
17 officer, including a tow authorized under Section 545.3051,
18 Transportation Code.

19 (b) To be eligible for an incident management towing permit,
20 an applicant must submit evidence that:

21 (1) the tow truck is equipped to tow light-duty or
22 heavy-duty vehicles according to the manufacturer's towing
23 guidelines;

24 (2) the applicant has at least \$500,000 of liability
25 insurance for the tow truck; and

26 (3) the applicant has at least \$50,000 of cargo
27 insurance for the tow truck.

1 (c) A tow truck permitted under this section may also be
2 used for private property towing and consent towing.

3 (d) When a tow truck is used for a nonconsent tow initiated
4 by a peace officer under Section 545.3051, Transportation Code, the
5 permit holder is an agent of law enforcement and is subject to
6 Section 545.3051(e), Transportation Code.

7 Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING
8 PERMIT. (a) A private property towing permit is required for a tow
9 truck used to perform a nonconsent tow authorized by a parking
10 facility owner under this chapter.

11 (b) To be eligible for a private property towing permit, an
12 applicant must submit evidence that:

13 (1) the tow truck is equipped to tow light-duty or
14 heavy-duty vehicles according to the manufacturer's towing
15 guidelines;

16 (2) the applicant has at least \$300,000 of liability
17 insurance for the tow truck; and

18 (3) the applicant has at least \$50,000 of cargo
19 insurance for the tow truck.

20 (c) A tow truck permitted under this section may also be
21 used for consent towing but not for incident management towing.

22 Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a)
23 A consent towing permit is required for a tow truck used to perform
24 a consent tow authorized by the vehicle owner.

25 (b) To be eligible for a consent towing permit, an applicant
26 must submit evidence that:

27 (1) the tow truck is equipped to tow light-duty or

1 heavy-duty vehicles according to the manufacturer's towing
2 guidelines; and

3 (2) the applicant has at least \$300,000 of liability
4 insurance for the tow truck.

5 (c) A tow truck permitted under this section may not be used
6 for nonconsent towing, including incident management towing and
7 private property towing.

8 Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT.

9 (a) The department shall issue a permit under this subchapter to an
10 applicant who meets the requirements for a permit. The department
11 may deny an application if the applicant has had a permit revoked
12 under this chapter.

13 (b) The department shall issue a certificate containing a
14 single unique permit number for each tow truck, regardless of
15 whether the permit holder holds more than one permit.

16 Sec. 2308.107. PERMIT RENEWAL. (a) A permit issued under
17 this chapter is valid for one year. The department may adopt a
18 system under which permits expire at different times during the
19 year.

20 (b) The department shall notify the permit holder at least
21 30 days before the date a permit expires. The notice must be in
22 writing and sent to the permit holder's last known address
23 according to the records of the department.

24 (c) A permit holder may renew a permit under this chapter
25 by:

26 (1) paying a fee for each tow truck; and

27 (2) providing to the department evidence of continuing

1 insurance or financial responsibility in an amount required by this
2 chapter.

3 Sec. 2308.108. CAB CARDS. (a) The department shall issue a
4 cab card for each tow truck issued a permit. The cab card must:

5 (1) show the permit number of the certificate issued
6 under Section 2308.106(b);

7 (2) show the type of permit issued;

8 (3) show the vehicle unit number;

9 (4) show the vehicle identification number; and

10 (5) contain a statement that the vehicle has been
11 issued a permit under this subchapter.

12 (b) The department shall issue a cab card when the
13 department issues or renews a permit under this subchapter.

14 (c) A permit holder must keep the cab card in the cab of each
15 permitted tow truck.

16 (d) The department may order a permit holder to surrender a
17 cab card if the permit is suspended or revoked under this chapter.

18 (e) If the department determines that the cab card system
19 described by Subsections (a) through (c) is not an efficient means
20 of enforcing this subchapter, the executive director by rule may
21 adopt an alternative method that is accessible by law enforcement
22 personnel in the field and provides for the enforcement of the
23 permit requirements of this subchapter.

24 (f) A cab card or a permit issued under the alternative
25 method described in Subsection (e) must be valid for the same
26 duration as a certificate issued under Section 2308.106.

27 Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A

1 permit holder shall display on each permitted tow truck:

2 (1) the permit holder's name;

3 (2) the permit holder's telephone number;

4 (3) the city and state where the permit holder is
5 located; and

6 (4) the permit number for the tow truck.

7 (b) The information required to be displayed must be:

8 (1) printed in letters and numbers that are at least
9 two inches high and in a color that contrasts with the color of the
10 background surface; and

11 (2) permanently affixed in conspicuous places on both
12 sides of the tow truck.

13 Sec. 2308.110. FINANCIAL RESPONSIBILITY. (a) A permit
14 holder shall maintain liability insurance for each tow truck
15 according to the requirements under this subchapter.

16 (b) Unless state law permits a tow truck to be self-insured,
17 any insurance required for a tow truck must be obtained from an
18 insurer authorized to do business in this state.

19 (c) An applicant or permit holder must file with the
20 department evidence of insurance as required by this subchapter.

21 (d) A permit holder shall keep evidence of insurance in a
22 form approved by the department in the cab of each permitted tow
23 truck.

24 [Sections 2308.111-2308.150 reserved for expansion]

25 SUBCHAPTER D. LICENSE REQUIREMENTS

26 Sec. 2308.151. LICENSE REQUIRED. Unless the person holds
27 an appropriate license under this subchapter, a person may not:

1 (1) perform towing operations; or

2 (2) operate a towing company.

3 Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS.

4 An applicant for a license under this subchapter must submit to the
5 department:

6 (1) a completed application on a form prescribed by
7 the executive director;

8 (2) the required fees; and

9 (3) any other information required by commission rule.

10 Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S
11 LICENSE. (a) An incident management towing operator's license is
12 required to operate a tow truck permitted under Section 2308.103.

13 (b) An applicant for an incident management towing
14 operator's license must:

15 (1) be a licensed Texas driver; and

16 (2) be certified by the National Drivers Certification
17 Program of the Towing and Recovery Association of America or
18 another certification program approved by the department.

19 Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE.
20 (a) A private property towing operator's license is required to
21 operate a tow truck permitted under Section 2308.104.

22 (b) An applicant for a private property towing operator's
23 license must:

24 (1) be a licensed Texas driver; and

25 (2) be certified by the National Drivers Certification
26 Program of the Towing and Recovery Association of America or
27 another certification program approved by the department.

1 Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A
2 consent towing operator's license is required to operate a tow
3 truck permitted under Section 2308.105.

4 (b) An applicant for a consent towing operator's license
5 must be a licensed Texas driver.

6 Sec. 2308.156. NONTRANSFERABILITY OF LICENSE. A license
7 issued by the executive director is valid throughout this state and
8 is not transferable.

9 Sec. 2308.157. CONTINUING EDUCATION. (a) The commission by
10 rule shall recognize, prepare, or administer continuing education
11 programs for license holders. Except as provided by Subsection
12 (c), each license holder must complete a continuing education
13 program before the license holder may renew the license holder's
14 license.

15 (b) A person recognized by the commission to offer a
16 continuing education program must:

17 (1) register with the department; and
18 (2) comply with rules adopted by the commission
19 relating to continuing education.

20 (c) To renew an incident management towing operator's
21 license the first time, a license holder must complete a
22 professional development course relating to towing that is
23 licensed or certified by the National Safety Council or another
24 course approved and administered by the department under this
25 section.

26 Sec. 2308.158. DRUG TESTING OF TOWING OPERATORS. (a) A
27 towing company shall establish a drug testing policy for towing

operators. A towing company that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model drug testing policy for use by a towing company. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced drug testing for towing operators.

Sec. 2308.159. LICENSE RENEWAL. (a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

(1) paying a renewal fee; and

(2) completing continuing education as required by

Section 2308.157.

ARTICLE 2. CONSOLIDATION OF LAWS RELATED TO TOWING

SECTION 2.01. Sections 643.201 and 643.203 through 643.208, Transportation Code, are transferred to Chapter 2308, Occupations Code, designated as Subchapter E, Chapter 2308, Occupations Code, renumbered as Sections 2308.201 through 2308.207, Occupations Code, and amended to read as follows:

SUBCHAPTER E. LOCAL REGULATION OF TOWING

Sec. 2308.201 [~~643.201~~]. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS. (a) A [~~In addition to the registration requirements of Subchapter B, a~~] political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by Title 7, Transportation Code [~~this title~~].

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political

subdivision. A fee charged for a license or permit may not exceed \$15.

~~[(e) In this section:~~

~~[(1) "Commercial driver's license" has the meaning assigned by Section 522.003.~~

~~[(2) "Consent tow" means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.~~

~~[(3) "Driver's license" has the meaning assigned by Section 521.001.~~

~~[(4) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow.]~~

Sec. 2308.202 ~~[643.203]~~. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.

Sec. 2308.203 ~~[643.204]~~. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing

1 company and are reasonably related to any financial or accounting
2 information provided to the governing body.

3 Sec. 2308.204 [~~643.205~~]. FEES FOR NONCONSENT TOWS IN OTHER
4 AREAS. (a) In an area in which no political subdivision regulates
5 the fees that may be charged or collected for a nonconsent tow from
6 private property, a towing company may charge and collect a fee for
7 the tow of a motor vehicle from private property in an amount not to
8 exceed an amount equal to 150 percent of the fee that the towing
9 company would have been authorized to charge for a nonconsent tow
10 made at the request of a peace officer of the political subdivision
11 in which the private property is located.

12 (b) A towing company may charge and collect a fee for the tow
13 of a vehicle, with a gross vehicle weight rating in excess of 26,000
14 pounds, from private property in an amount not to exceed an amount
15 equal to 125 percent of the fee that the towing company would have
16 been authorized to charge for a nonconsent tow made at the request
17 of a peace officer of the political subdivision in which the private
18 property is located.

19 Sec. 2308.205 [~~643.206~~]. STORAGE OF TOWED VEHICLES. (a) A
20 towing company that makes a nonconsent tow shall tow the vehicle to
21 a vehicle storage facility that is operated by a person who holds a
22 license to operate the facility under Chapter 2303, [~~Occupations~~
23 ~~Code~~], unless the towing company agrees to take the vehicle to a
24 location designated by the vehicle's owner.

25 (b) A storage or notification fee imposed in connection with
26 a motor vehicle towed to a vehicle storage facility is governed by
27 Chapter 2303[~~Occupations Code~~].

1 (c) Except as provided by this chapter, Article 18.23, Code
2 of Criminal Procedure, or Chapter 2303[~~, Occupations Code~~], a fee
3 may not be charged or collected without the prior written consent of
4 the vehicle owner or operator.

5 Sec. 2308.206 [~~643.207~~]. REQUIRED FILING. (a) Before
6 January 31 of each year, a towing company shall file with the
7 department a schedule showing each towing fee that the towing
8 company charges or collects in connection with a nonconsent tow.

9 (b) If a political subdivision begins regulating nonconsent
10 tow fees, the fees shall be reported to the department by the towing
11 company before the 30th day after the regulation goes into effect.

12 (c) Any changes in nonconsent tow fees regulated by a
13 political subdivision shall be reported to the department by the
14 towing company before the 30th day after the effective date of the
15 change.

16 (d) The department shall make towing fee schedules
17 available on the department's Internet website. The department
18 shall make no determination as to the reasonableness of a towing fee
19 schedule.

20 (e) A license or permit holder may not charge a fee for a
21 nonconsent tow that is greater than the fee listed in the schedule
22 most recently submitted to the department under this section.

23 Sec. 2308.207 [~~643.208~~]. REQUIRED POSTING. (a) All
24 [~~towing and~~] storage fees shall be posted at the licensed vehicle
25 storage facility to which the motor vehicle has been delivered and
26 shall be posted in view of the person who claims the vehicle.

27 (b) A vehicle storage facility accepting a nonconsent towed

1 vehicle shall post a sign in one inch letters stating "Nonconsent
2 tow fees schedules available on request." The vehicle storage
3 facility shall provide a copy of a nonconsent towing fees schedule
4 on request.

5 SECTION 2.02. Section 684.101, Transportation Code, is
6 transferred to Subchapter E, Chapter 2308, Occupations Code, and
7 renumbered as Section 2308.208, Occupations Code, to read as
8 follows:

9 Sec. 2308.208 [~~684.101~~]. MUNICIPAL ORDINANCE REGULATING
10 UNAUTHORIZED VEHICLES. A municipality may adopt an ordinance that
11 is identical to this chapter or that imposes additional
12 requirements that exceed the minimum standards of this chapter but
13 may not adopt an ordinance conflicting with this chapter.

14 SECTION 2.03. Sections 684.011, 684.012, 684.0125,
15 684.013, 684.014, and 684.015, Transportation Code, are
16 transferred to Chapter 2308, Occupations Code, designated as
17 Subchapter F, Chapter 2308, Transportation Code, renumbered as
18 Sections 2308.251 through 2308.256, Occupations Code, and amended
19 to read as follows:

20 SUBCHAPTER F. UNAUTHORIZED VEHICLES

21 Sec. 2308.251 [~~684.011~~]. PROHIBITION AGAINST UNATTENDED
22 VEHICLES IN CERTAIN AREAS. (a) The owner or operator of a vehicle
23 may not leave unattended on a parking facility a vehicle that:

24 (1) is in or obstructs a vehicular traffic aisle,
25 entry, or exit of the parking facility;

26 (2) prevents a vehicle from exiting a parking space in
27 the facility;

1 (3) is in or obstructs a fire lane marked according to
2 Subsection (c); or

3 (4) does not display the special license plates issued
4 under Section 504.201, Transportation Code, or the disabled parking
5 placard issued under Chapter 681, Transportation Code, for a
6 vehicle transporting a disabled person and is in a parking space
7 that is designated for the exclusive use of a vehicle transporting a
8 disabled person.

9 (b) Subsection (a) does not apply to an emergency vehicle
10 that is owned by, or the operation of which is authorized by, a
11 governmental entity.

12 (c) If a government regulation governing the marking of a
13 fire lane applies to a parking facility, a fire lane in the facility
14 must be marked as provided by the regulation. If a government
15 regulation on the marking of a fire lane does not apply to the
16 parking facility, all curbs of fire lanes must be painted red and be
17 conspicuously and legibly marked with the warning "FIRE LANE--TOW
18 AWAY ZONE" in white letters at least three inches tall, at intervals
19 not exceeding 50 feet.

20 Sec. 2308.252 [~~684.012~~]. REMOVAL AND STORAGE OF
21 UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without
22 the consent of the owner or operator of an unauthorized vehicle,
23 cause the vehicle and any property on or in the vehicle to be
24 removed and stored at a vehicle storage facility at the vehicle
25 owner's or operator's expense if:

26 (1) signs that comply with Subchapter G [~~E~~]
27 prohibiting unauthorized vehicles are located on the parking

1 facility at the time of towing and for the preceding 24 hours and
2 remain installed at the time of towing;

3 (2) the owner or operator of the vehicle has received
4 actual notice from the parking facility owner that the vehicle will
5 be towed at the vehicle owner's or operator's expense if it is in or
6 not removed from an unauthorized space;

7 (3) the parking facility owner gives notice to the
8 owner or operator of the vehicle under Subsection (b); or

9 (4) the vehicle is:

10 (A) left in violation of Section 2308.251
11 [~~684.011~~] or 2308.253 [~~684.0125~~]; or

12 (B) in or obstructing a portion of a paved
13 driveway or abutting public roadway used for entering or exiting
14 the facility [~~and the removal is approved by a peace officer~~].

15 (b) A parking facility owner is considered to have given
16 notice under Subsection (a)(3) if:

17 (1) a conspicuous notice has been attached to the
18 vehicle's front windshield or, if the vehicle has no front
19 windshield, to a conspicuous part of the vehicle stating:

20 (A) that the vehicle is in a parking space in
21 which the vehicle is not authorized to be parked;

22 (B) a description of all other unauthorized areas
23 in the parking facility;

24 (C) that the vehicle will be towed at the expense
25 of the owner or operator of the vehicle if it remains in an
26 unauthorized area of the parking facility; and

27 (D) a telephone number that is answered 24 hours

1 a day to enable the owner or operator of the vehicle to locate the
2 vehicle; and

3 (2) a notice is mailed after the notice is attached to
4 the vehicle as provided by Subdivision (1) to the owner of the
5 vehicle by certified mail, return receipt requested, to the last
6 address shown for the owner according to the vehicle registration
7 records of the Texas Department of Transportation, or if the
8 vehicle is registered in another state, the appropriate agency of
9 that state.

10 (c) The notice under Subsection (b)(2) must:

11 (1) state that the vehicle is in a space in which the
12 vehicle is not authorized to park;

13 (2) describe all other unauthorized areas in the
14 parking facility;

15 (3) contain a warning that the unauthorized vehicle
16 will be towed at the expense of the owner or operator of the vehicle
17 if it is not removed from the parking facility before the 15th day
18 after the postmark date of the notice; and

19 (4) state a telephone number that is answered 24 hours
20 a day to enable the owner or operator to locate the vehicle.

21 (d) The mailing of a notice under Subsection (b)(2) is not
22 required if after the notice is attached under Subsection (b)(1)
23 the owner or operator of the vehicle leaves the vehicle in another
24 location where parking is unauthorized for the vehicle according to
25 the notice.

26 Sec. 2308.253 [~~684.0125~~]. UNATTENDED VEHICLES ON PARKING
27 FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES.

1 (a) This section applies only to a parking facility serving or
2 adjacent to an apartment complex consisting of one or more
3 residential apartment units and any adjacent real property serving
4 the apartment complex.

5 (b) The owner or operator of a vehicle may not leave
6 unattended on a parking facility a vehicle that:

7 (1) obstructs a gate that is designed or intended for
8 the use of pedestrians or vehicles;

9 (2) obstructs pedestrian or vehicular access to an
10 area that is used for the placement of a garbage or refuse
11 receptacle used in common by residents of the apartment complex;

12 (3) is in or obstructs a restricted parking area or
13 parking space designated under Subchapter G [€], including a space
14 designated for the use of employees or maintenance personnel of the
15 parking facility or apartment complex;

16 (4) is in a tow away zone, other than a fire lane
17 covered by Section 2308.251(c) [~~684.011(c)~~], that is brightly
18 painted and is conspicuously and legibly marked with the warning
19 "TOW AWAY ZONE" in contrasting letters at least three inches tall;

20 (5) is a semitrailer, trailer, or truck-tractor, as
21 defined by Chapter 502, Transportation Code, unless the owner or
22 operator of the vehicle is permitted under the terms of a rental or
23 lease agreement with the apartment complex to leave the unattended
24 vehicle on the parking facility; or

25 (6) is leaking a fluid that presents a hazard or threat
26 to persons or property.

27 (c) A parking facility owner may not have an emergency

1 vehicle described by Section 2308.251(b) [~~684.011(b)~~] removed from
2 the parking facility.

3 (d) Except as provided by a contract described by Subsection
4 (e), a parking facility owner may not have a vehicle removed from
5 the parking facility merely because the vehicle does not display:

6 (1) an unexpired license plate or registration
7 insignia issued for the vehicle under Chapter 502, Transportation
8 Code, or the vehicle registration law of another state or country;
9 or

10 (2) a valid vehicle inspection certificate issued
11 under Chapter 548, Transportation Code, or the vehicle inspection
12 law of another state or country.

13 (e) A contract provision providing for the removal from a
14 parking facility of a vehicle that does not display an unexpired
15 license plate or registration insignia or a valid inspection
16 certificate is valid only if the provision requires the owner or
17 operator of the vehicle to be given at least 10 days' written notice
18 that the vehicle will be towed from the facility at the vehicle
19 owner's or operator's expense if it is not removed from the parking
20 facility. The notice must be:

21 (1) delivered in person to the owner or operator of the
22 vehicle; or

23 (2) sent by certified mail, return receipt requested,
24 to that owner or operator.

25 (f) This section may not be construed:

26 (1) to authorize the owner or operator of a vehicle to
27 leave an unattended vehicle on property that is not designed or

1 intended for the parking of vehicles; or

2 (2) to limit or restrict the enforcement of Chapter
3 683, Transportation Code, the abandoned motor vehicle law.

4 (g) A provision of an apartment lease or rental agreement
5 entered into or renewed on or after January 1, 2004, that is in
6 conflict or inconsistent with this section is void and may not be
7 enforced.

8 Sec. 2308.254 [~~684.013~~]. LIMITATION ON PARKING FACILITY
9 OWNER'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLE. A parking
10 facility owner may not have an unauthorized vehicle removed from
11 the facility except:

12 (1) as provided by this chapter or a municipal
13 ordinance that complies with Section 2308.208 [~~684.101~~]; or

14 (2) under the direction of a peace officer or the owner
15 or operator of the vehicle.

16 Sec. 2308.255 [~~684.014~~]. TOWING COMPANY'S AUTHORITY TO
17 REMOVE AND STORE UNAUTHORIZED VEHICLE. (a) A towing company that
18 is insured as provided by Subsection (c) may, without the consent of
19 an owner or operator of an unauthorized vehicle, remove and store
20 the vehicle at a vehicle storage facility at the expense of the
21 owner or operator of the vehicle if:

22 (1) the towing company has received written
23 verification from the parking facility owner that:

24 (A) the parking facility owner has installed the
25 signs required by Section 2308.252(a)(1) [~~684.012(a)(1)~~]; or

26 (B) the owner or operator received notice under
27 Section 2308.252(a)(2) [~~684.012(a)(2)~~] or the parking facility

owner gave notice complying with Section 2308.252(a)(3)

~~[684.012(a)(3)]~~; or

(2) the vehicle is:

(A) left in violation of Section 2308.251

~~[684.011]~~; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

(b) A towing company may not remove an unauthorized vehicle except under:

(1) this chapter;

(2) a municipal ordinance that complies with Section 2308.208 ~~[684.101]~~; or

(3) the direction of a peace officer or the owner or operator of the vehicle.

(c) Only a towing company that is insured against liability for property damage incurred in towing a vehicle may remove and store an unauthorized vehicle under this section.

(d) A towing company may remove and store a vehicle under Subsection (a) only if the parking facility owner:

(1) requests that the towing company remove and store the specific vehicle; or

(2) has a standing written agreement with the towing company to enforce parking restrictions in the parking facility from which the vehicle will be removed.

Sec. 2308.256 ~~[684.015]~~. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) A vehicle

1 storage facility accepting a vehicle that is towed under this
2 chapter shall within two hours after receiving the vehicle report
3 to the police department of the municipality in which the parking
4 facility is located, or, if the parking facility is not located in a
5 municipality having a police department, to the sheriff of the
6 county in which the parking facility is located:

7 (1) a general description of the vehicle;
8 (2) the state and number of the vehicle's license
9 plate, if any;

10 (3) the vehicle identification number of the vehicle,
11 if it can be ascertained;

12 (4) the location from which the vehicle was towed; and

13 (5) the name and location of the vehicle storage
14 facility where the vehicle is being stored.

15 (b) The report required by this section must be made by
16 telephone or delivered personally or by facsimile.

17 SECTION 2.04. Subchapter C, Chapter 684, Transportation
18 Code, is transferred to Chapter 2308, Occupations Code, and
19 redesignated as Subchapter G, Chapter 2308, Occupations Code, and
20 Sections 684.031 through 684.035, Transportation Code, are
21 renumbered as Sections 2308.301 through 2308.305, Occupations
22 Code, and amended to read as follows:

23 SUBCHAPTER G [C]. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND
24 DESIGNATING RESTRICTED AREAS

25 Sec. 2308.301 [~~684.031~~]. GENERAL REQUIREMENTS FOR SIGN
26 PROHIBITING UNAUTHORIZED VEHICLES. (a) Except as provided by
27 Subsection (a)(2)(B) and Section 2308.304 [~~684.034~~] or 2308.305

1 ~~[684.035]~~ an unauthorized vehicle may not be towed under Section
2 2308.252(a)(1) ~~[684.012(a)(1)]~~ unless a sign prohibiting
3 unauthorized vehicles on a parking facility is:

4 (1) facing and conspicuously visible to the driver of
5 a vehicle that enters the facility;

6 (2) located:

7 (A) on the right or left side of each driveway or
8 curb-cut through which a vehicle can enter the facility, including
9 an entry from an alley abutting the facility; or

10 (B) at intervals along the entrance so that no
11 entrance is farther than 25 feet from a sign if:

12 (i) curbs, access barriers, landscaping, or
13 driveways do not establish definite vehicle entrances onto a
14 parking facility from a public roadway other than an alley; and

15 (ii) the width of an entrance exceeds 35
16 feet;

17 (3) permanently mounted on a pole, post, permanent
18 wall, or permanent barrier;

19 (4) installed on the parking facility; and

20 (5) installed so that the bottom edge of the sign is no
21 lower than five feet and no higher than eight feet above ground
22 level.

23 (b) Except as provided by Section 2308.305 ~~[684.035]~~, an
24 unauthorized vehicle may be towed under Section 2308.252(a)(1)
25 ~~[684.012(a)(1)]~~ only if each sign prohibiting unauthorized
26 vehicles:

27 (1) is made of weather-resistant material;

- 1 (2) is at least 18 inches wide and 24 inches tall;
- 2 (3) contains the international symbol for towing
- 3 vehicles;
- 4 (4) contains a statement describing who may park in
- 5 the parking facility and prohibiting all others;
- 6 (5) bears the words "Unauthorized Vehicles Will Be
- 7 Towed at Owner's or Operator's Expense";
- 8 (6) contains a statement of the days and hours of
- 9 towing enforcement; and
- 10 (7) contains a number, including the area code, of a
- 11 telephone that is answered 24 hours a day to enable an owner or
- 12 operator of a vehicle to locate the vehicle.

13 Sec. 2308.302 [~~684.032~~]. COLOR, LAYOUT, AND LETTERING
14 HEIGHT REQUIREMENTS. (a) Except as provided by Section 2308.305
15 [~~684.035~~], each sign required by this chapter must comply with the
16 color, layout, and lettering height requirements of this section.

17 (b) A bright red international towing symbol, which is a
18 solid silhouette of a tow truck towing a vehicle on a generally
19 rectangular white background, at least four inches in height, must
20 be on the uppermost portion of a sign or on a separate sign placed
21 immediately above the sign.

22 (c) The portion of the sign immediately below the
23 international towing symbol must contain the words "Towing
24 Enforced" or the information provided by Section 2308.301(b)(4)
25 [~~684.031(b)(4)~~] in lettering at least two inches in height. The
26 lettering on this portion of the sign must consist of white letters
27 on a bright red background.

1 (d) Except as provided by Subsection (e); the next lower
2 portion of the sign must contain the remaining information required
3 by Section 2308.301(b) [~~684.031(b)~~] displayed in bright red letters
4 at least one inch in height on a white background.

5 (e) The bottommost portion of the sign must contain the
6 telephone number required by Section 2308.301(b) [~~684.031(b)~~], in
7 lettering at least one inch in height and may, if the facility owner
8 chooses or if an applicable municipal ordinance requires, include
9 the name and address of the storage facility to which an
10 unauthorized vehicle will be removed. The lettering on this
11 portion of the sign must consist of white letters on a bright red
12 background.

13 Sec. 2308.303 [~~684.033~~]. TELEPHONE NUMBER FOR LOCATING
14 TOWED VEHICLE REQUIRED. If a parking facility owner posts a sign
15 described by Sections 2308.301 [~~684.031~~] and 2308.302 [~~684.032~~],
16 the owner of a vehicle that is towed from the facility under this
17 chapter must be able to locate the vehicle by calling the telephone
18 number on the sign.

19 Sec. 2308.304 [~~684.034~~]. DESIGNATION OF RESTRICTED PARKING
20 SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY. A parking
21 facility owner may designate one or more spaces as restricted
22 parking spaces on a portion of an otherwise unrestricted parking
23 facility. Instead of installing a sign at each entrance to the
24 parking facility as provided by Section 2308.301(a)(2)
25 [~~684.031(a)(2)~~], an owner may place a sign that prohibits
26 unauthorized vehicles from parking in designated spaces and that
27 otherwise complies with Sections 2308.301 [~~684.031~~] and 2308.302

1 ~~[684.032]~~:

2 (1) at the right or left side of each entrance to a
3 designated area or group of parking spaces located on the
4 restricted portion of the parking facility; or

5 (2) at the end of a restricted parking space so that
6 the sign, the top of which must not be higher than seven feet above
7 the ground, is in front of a vehicle that is parked in the space and
8 the rear of which is at the entrance of the space.

9 Sec. 2308.305 ~~[684.035]~~. INDIVIDUAL PARKING RESTRICTIONS
10 IN RESTRICTED AREA. (a) A parking facility owner who complies with
11 Sections 2308.301 ~~[684.031]~~ and 2308.302 ~~[684.032]~~ may impose
12 further specific parking restrictions in an area to which the signs
13 apply for individual spaces by installing or painting a
14 weather-resistant sign or notice on a curb, pole, post, permanent
15 wall, or permanent barrier so that the sign is in front of a vehicle
16 that is parked in the space and the rear of which is at the entrance
17 of the space.

18 (b) The top of the sign or notice may not be higher than
19 seven feet above the ground.

20 (c) The sign or notice must include an indication that the
21 space is reserved for a particular unit number, person, or type of
22 person.

23 (d) The letters on the sign or notice must be at least two
24 inches in height and must contrast to the color of the curb, wall,
25 or barrier so they can be read during the day and at night. The
26 letters are not required to be illuminated or made of reflective
27 material.

SECTION 2.05. Subchapter D, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, and redesignated as Subchapter H, Chapter 2308, Occupations Code, and Sections 684.051 through 684.054, Transportation Code, are renumbered as Sections 2308.351 through 2308.354, Occupations Code, and amended to read as follows:

SUBCHAPTER H [D]. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS

Sec. 2308.351 [~~684.051~~]. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY. Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section 2308.002(7)(B)(i) [~~684.001(1)(B)(i)~~] if the owner or towing company gives notice under Section 2308.252(a)(1), (2), or (3) [~~684.012(a)(1), (2), or (3)~~] and otherwise complies with this chapter.

Sec. 2308.352 [~~684.052~~]. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY. Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area described by Section 2308.002(7)(B)(ii) [~~684.001(1)(B)(ii)~~] if notice provided by Section 2308.252(a)(2) or (3) [~~684.012(a)(2) or (3)~~] is given and the owner or towing company has otherwise complied with this chapter.

Sec. 2308.353 [~~684.053~~]. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY.

(a) A governmental entity that has jurisdiction over a public

1 roadway and that has posted one or more signs in the right-of-way
2 stating that parking is prohibited in the right-of-way may:

3 (1) remove or contract with a towing company to remove
4 an unauthorized vehicle parked in the right-of-way of the public
5 roadway; or

6 (2) grant written permission to an abutting parking
7 facility owner to:

8 (A) post one or more "No parking in R.O.W." signs
9 along a common property line of the facility and the roadway; and

10 (B) remove vehicles from the right-of-way of the
11 public roadway under this chapter.

12 (b) A sign under Subsection (a)(2) must:

13 (1) state that a vehicle parked in the right-of-way
14 may be towed at the expense of the owner or operator of the vehicle;

15 (2) be placed facing the public roadway:

16 (A) on the parking facility owner's property not
17 more than two feet from the common boundary line; and

18 (B) at intervals so that no point in the boundary
19 line is less than 25 feet from a sign posted under this subsection;
20 and

21 (3) in all other respects comply with Subchapter G
22 [E].

23 (c) After signs have been posted under Subsection (b), the
24 parking facility owner or a towing company may remove an
25 unauthorized vehicle from the right-of-way subject to the
26 governmental entity's written permission given under Subsection
27 (a)(2).

1 Sec. 2308.354 [~~684.054~~]. AUTHORITY FOR REMOVAL OF VEHICLE
2 FROM PUBLIC ROADWAY. (a) Under an ordinance of a municipality
3 regulating the parking of vehicles in the municipality, to aid in
4 the enforcement of the ordinance, an employee designated by the
5 municipality may be authorized to:

6 (1) immobilize a vehicle parked in the municipality;
7 and

8 (2) remove an immobilized vehicle from a public
9 roadway in the municipality.

10 (b) A parking facility owner or towing company may not
11 remove a vehicle from a public roadway except under:

12 (1) this chapter or a municipal ordinance that
13 complies with Section 2308.208 [~~684.101~~]; or

14 (2) the direction of a peace officer or the owner or
15 operator of the vehicle.

16 SECTION 2.06. Subchapter E, Chapter 684, Transportation
17 Code, is transferred to Chapter 2308, Occupations Code, and
18 redesignated as Subchapter I, Chapter 2308, Occupations Code, and
19 Sections 684.081 through 684.087, Transportation Code, are
20 renumbered as Sections 2308.401 through 2308.407, Occupations
21 Code, to read as follows:

22 SUBCHAPTER I [~~E~~]. REGULATION OF TOWING COMPANIES AND PARKING

23 FACILITY OWNERS

24 Sec. 2308.401 [~~684.081~~]. PARKING FACILITY OWNER PROHIBITED
25 FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY. (a) A parking
26 facility owner may not directly or indirectly accept anything of
27 value from a towing company in connection with the removal of a

1 vehicle from a parking facility.

2 (b) A parking facility owner may not have a direct or
3 indirect monetary interest in a towing company that for
4 compensation removes unauthorized vehicles from a parking facility
5 in which the parking facility owner has an interest.

6 Sec. 2308.402 [~~684.082~~]. TOWING COMPANY PROHIBITED FROM
7 FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) A towing
8 company may not directly or indirectly give anything of value to a
9 parking facility owner in connection with the removal of a vehicle
10 from a parking facility.

11 (b) A towing company may not have a direct or indirect
12 monetary interest in a parking facility from which the towing
13 company for compensation removes unauthorized vehicles.

14 Sec. 2308.403 [~~684.083~~]. LIMITATION ON LIABILITY OF PARKING
15 FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE. A
16 parking facility owner who causes the removal of an unauthorized
17 vehicle is not liable for damages arising from the removal or
18 storage of the vehicle if the vehicle:

19 (1) was removed in compliance with this chapter; and

20 (2) is:

21 (A) removed by a towing company insured against
22 liability for property damage incurred in towing a vehicle; and

23 (B) stored by a vehicle storage facility insured
24 against liability for property damage incurred in storing a
25 vehicle.

26 Sec. 2308.404 [~~684.084~~]. CIVIL LIABILITY OF TOWING COMPANY
27 OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER. (a) A towing

1 company or parking facility owner who violates this chapter is
2 liable to the owner or operator of the vehicle that is the subject
3 of the violation for:

4 (1) damages arising from the removal or storage of the
5 vehicle; and

6 (2) towing or storage fees assessed in connection with
7 the vehicle's removal or storage.

8 (b) A vehicle's owner or operator is not required to prove
9 negligence of a parking facility owner or towing company to recover
10 under Subsection (a).

11 (c) A towing company or parking facility owner who
12 intentionally, knowingly, or recklessly violates this chapter is
13 liable to the owner or operator of the vehicle that is the subject
14 of the violation for \$300 plus three times the amount of fees
15 assessed in the vehicle's removal, towing, or storage.

16 (d) In a suit brought under this chapter, the prevailing
17 party is entitled to recover reasonable attorney's fees.

18 Sec. 2308.405 [~~684.085~~]. VIOLATION OF CHAPTER; FINE. A
19 violation of this chapter is a misdemeanor punishable by a fine of
20 not less than \$500 or more than \$1,500.

21 Sec. 2308.406 [~~684.086~~]. VIOLATION OF CHAPTER; INJUNCTION.
22 A violation of this chapter may be enjoined under Subchapter E,
23 Chapter 17, Business & Commerce Code.

24 Sec. 2308.407 [~~684.087~~]. MINOR SIGN OR LETTERING HEIGHT
25 VARIATIONS. A minor variation of a required or minimum height of a
26 sign or lettering is not a violation of this chapter.

27 SECTION 2.07. Sections 685.002 through 685.010,

Transportation Code, are transferred to Chapter 2308, Occupations Code, designated as Subchapter J, Chapter 2308, Occupations Code, renumbered as Sections 2308.451 through 2308.459, Occupations Code, and amended to read as follows:

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED VEHICLES

Sec. 2308.451 [~~685.002~~]. PAYMENT OF COST OF REMOVAL AND STORAGE OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person or law enforcement agency that authorized the removal shall:

(1) pay the costs of the removal and storage; or

(2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

Sec. 2308.452 [~~685.003~~]. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING. The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement.

Sec. 2308.453 [~~685.004~~]. JURISDICTION. A hearing under this chapter shall be in the justice court having jurisdiction in

the precinct in which the vehicle storage facility is located.

Sec. 2308.454 [~~685.005~~]. NOTICE TO VEHICLE OWNER OR OPERATOR. (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, [~~Occupations Code~~] shall include with that notice a notice of the person's rights under this chapter.

Sec. 2308.455 [~~685.006~~]. CONTENTS OF NOTICE. The notice under Section 2308.454 [~~685.005~~] must include:

(1) a statement of:

(A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove the vehicle;

(B) the information that a request for a hearing must contain; and

(C) any filing fee for the hearing;

(2) the name, address, and telephone number of the towing company that removed the vehicle;

(3) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(4) the name, address, and telephone number of the person, property owner, or law enforcement agency that authorized

1 the removal of the vehicle; and

2 (5) the name, address, and telephone number of the
3 justice court having jurisdiction in the precinct in which the
4 vehicle storage facility is located.

5 Sec. 2308.456 [~~685.007~~]. REQUEST FOR HEARING. (a) Except
6 as provided by Subsection (c), a person entitled to a hearing under
7 this chapter must deliver a written request for the hearing to the
8 court before the 14th day after the date the vehicle was removed and
9 placed in the vehicle storage facility, excluding Saturdays,
10 Sundays, and legal holidays.

11 (b) A request for a hearing must contain:

12 (1) the name, address, and telephone number of the
13 owner or operator of the vehicle;

14 (2) the location from which the vehicle was removed;

15 (3) the date when the vehicle was removed;

16 (4) the name, address, and telephone number of the
17 person or law enforcement agency that authorized the removal;

18 (5) the name, address, and telephone number of the
19 vehicle storage facility in which the vehicle was placed;

20 (6) the name, address, and telephone number of the
21 towing company that removed the vehicle;

22 (7) a copy of any receipt or notification that the
23 owner or operator received from the towing company or the vehicle
24 storage facility; and

25 (8) if the vehicle was removed from a parking
26 facility:

27 (A) one or more photographs that show the

1 location and text of any sign posted at the facility restricting
2 parking of vehicles; or

3 (B) a statement that no sign restricting parking
4 was posted at the parking facility.

5 (c) If notice was not given under Section 2308.454
6 ~~[685.005]~~, the 14-day deadline for requesting a hearing under
7 Subsection (a) does not apply, and the owner or operator of the
8 vehicle may deliver a written request for a hearing at any time.

9 (d) A person who fails to deliver a request in accordance
10 with Subsection (a) waives the right to a hearing.

11 Sec. 2308.457 ~~[685.008]~~. FILING FEE AUTHORIZED. The court
12 may charge a filing fee of \$20 for a hearing under this chapter.

13 Sec. 2308.458 ~~[685.009]~~. HEARING. (a) A hearing under this
14 chapter shall be held before the 14th ~~[10th]~~ working day after the
15 date the court receives the request for the hearing.

16 (b) The court shall notify the person who requested the
17 hearing, ~~[and]~~ the person or law enforcement agency that authorized
18 the removal of the vehicle, and the vehicle storage facility in
19 which the vehicle was placed of the date, time, and place of the
20 hearing in a manner provided by Rule 21a, Texas Rules of Civil
21 Procedure ~~[by registered or certified mail]~~. The notice of the
22 hearing to the person or law enforcement agency that authorized the
23 removal of the vehicle shall include a copy of the request for
24 hearing.

25 (b-1) At a hearing under this section:

26 (1) the burden of proof is on the person who requested
27 the hearing; and

1 (2) hearsay evidence is admissible if it is considered
2 otherwise reliable by the justice of the peace.

3 (c) The issues in a hearing under this chapter are:

4 (1) whether probable cause existed for the removal and
5 placement of the vehicle;

6 (2) whether a towing charge imposed or collected in
7 connection with the removal or placement of the vehicle was greater
8 than the amount authorized by the political subdivision under
9 Section 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~];

10 (3) whether a towing charge imposed or collected in
11 connection with the removal or placement of the vehicle was greater
12 than the amount authorized under Section 2308.203 [~~643.204~~] or
13 2308.204 [~~643.205~~]; or

14 (4) whether a towing charge imposed or collected in
15 connection with the removal or placement of the vehicle was greater
16 than the amount filed with the department under Section 2308.206
17 [~~643.207~~].

18 (d) The court shall make written findings of fact and a
19 conclusion of law.

20 (e) The court may award:

21 (1) court costs to the prevailing party;

22 (2) the reasonable cost of photographs submitted under
23 Section 2308.456(b)(8) [~~685.007(b)(8)~~] to a vehicle owner or
24 operator who is the prevailing party; ~~and~~

25 (3) an amount equal to the amount that the towing
26 charge exceeded fees regulated by a political subdivision or
27 authorized by this code or by Chapter 2303; and

1 (4) reimbursement of fees paid for vehicle towing and
2 storage [~~7 Occupations Code~~].

3 Sec. 2308.459 [~~685.010~~]. APPEAL. An appeal from a hearing
4 under this chapter is governed by the rules of procedure applicable
5 to civil cases in justice court, except that no appeal bond may be
6 required by the court.

7 SECTION 2.08. Subchapter J, Chapter 2308, Occupations Code,
8 as added by this Act, is amended by adding Section 2308.460 to read
9 as follows:

10 Sec. 2308.460. ENFORCEMENT OF AWARD. An award under this
11 chapter may be enforced by any means available for the enforcement
12 of a judgment for a debt.

13 SECTION 2.09. Chapter 2308, Occupations Code, is amended by
14 adding Subchapter K to read as follows:

15 SUBCHAPTER K. ENFORCEMENT

16 Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The commission
17 may impose an administrative penalty on a person under Subchapter
18 F, Chapter 51, regardless of whether the person holds a
19 registration, permit, or license under this chapter, if the person
20 violates:

21 (1) this chapter or a rule adopted under this chapter;

22 or

23 (2) a rule or order of the executive director or
24 commission.

25 (b) An administrative penalty may not be imposed unless the
26 person charged with a violation is provided the opportunity for a
27 hearing.

1 Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL
2 PENALTY. (a) The executive director may issue a cease and desist
3 order as necessary to enforce this chapter if the executive
4 director determines that the action is necessary to prevent a
5 violation of this chapter and to protect public health and safety.

6 (b) The attorney general or executive director may
7 institute an action for an injunction or a civil penalty under this
8 chapter as provided by Section 51.352.

9 Sec. 2308.503. SANCTIONS. The department may impose
10 sanctions as provided by Section 51.353.

11 Sec. 2308.504. CRIMINAL PENALTY; LICENSING. (a) A person
12 commits an offense if the person:

13 (1) violates the permitting or licensing requirements
14 of this chapter;

15 (2) performs towing without a license to perform
16 towing in this state;

17 (3) employs an individual who does not hold the
18 appropriate license required by this chapter; or

19 (4) falsifies a certification or training.

20 (b) An offense under this section is a Class C misdemeanor.

21 SECTION 2.10. Section 643.253(d), Transportation Code, is
22 transferred to Subchapter K, Chapter 2308, Occupations Code,
23 renumbered as Section 2308.505, Occupations Code, and amended to
24 read as follows:

25 Sec. 2308.505. CRIMINAL PENALTY; TOWING. (a) [~~(a)~~] A
26 person commits an offense if the person:

27 (1) violates an ordinance, resolution, order, rule, or

1 regulation of a political subdivision adopted under Section
2 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~], for which the political
3 subdivision does not prescribe the penalty;

4 (2) charges or collects a fee in a political
5 subdivision that regulates the operation of tow trucks under
6 Section 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~] that is not
7 authorized or is greater than the authorized amount of the fee;

8 (3) charges or collects a fee greater than the amount
9 authorized under Section 2308.204 [~~643.205~~];

10 (4) charges or collects a fee in excess of the amount
11 filed with the department under Section 2308.206 [~~643.207~~];

12 (5) violates Section 2308.205 [~~643.206~~]; or

13 (6) violates a rule of the department applicable to a
14 tow truck and towing company.

15 (b) An offense under this section is a misdemeanor
16 punishable by a fine of not less than \$200 or more than \$1,000 per
17 violation.

18 ARTICLE 3. CONFORMING AMENDMENTS

19 SECTION 3.01. Article 18.23(e), Code of Criminal Procedure,
20 is amended to read as follows:

21 (e) Subchapter J, Chapter 2308, Occupations Code [~~Chapter~~
22 ~~685, Transportation Code~~], does not apply to a motor vehicle
23 directed by a law enforcement agency to be towed and stored for an
24 evidentiary or examination purpose.

25 SECTION 3.02. Section 101.141(a), Government Code, is
26 amended to read as follows:

27 (a) A clerk of a justice court shall collect fees and costs

as follows:

(1) additional court cost in certain civil cases to establish and maintain an alternative dispute resolution system, if authorized by the commissioners court of a county with a population of at least 2.5 million (Sec. 152.005, Civil Practice and Remedies Code) . . . not to exceed \$3;

(2) additional filing fees:

(A) to fund Dallas County civil court facilities (Sec. 51.705, Government Code) . . . not more than \$15; and

(B) for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee, to fund civil legal services for the indigent (Sec. 133.153, Local Government Code) . . . \$2;

(3) for filing a suit in Comal County (Sec. 152.0522, Human Resources Code) . . . \$1.50;

(4) fee for hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court (Sec. 2308.457, Occupations Code [~~685.008, Transportation Code~~]) . . . \$20;

(5) court fees and costs, if ordered by the court, for a suit filed by an inmate in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser of:

(A) 20 percent of the preceding six months' deposits to the inmate's trust account administered by the Texas

1 Department of Criminal Justice under Section 501.014, Government
2 Code; or

3 (B) the total amount of court fees and costs;

4 (6) monthly payment for remaining court fees and costs
5 after the initial payment for a suit in which an affidavit or
6 unsworn declaration of inability to pay costs is filed by the inmate
7 (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser
8 of:

9 (A) 10 percent of that month's deposit to the
10 inmate's trust account administered by the Texas Department of
11 Criminal Justice under Section 501.014, Government Code; or

12 (B) the total amount of court fees and costs that
13 remain unpaid;

14 (7) the following costs not otherwise charged to the
15 inmate under Section 14.006, Civil Practice and Remedies Code, if
16 the inmate has previously filed an action dismissed as malicious or
17 frivolous (Sec. 14.007, Civil Practice and Remedies Code):

18 (A) expenses of service of process;

19 (B) postage; and

20 (C) transportation, housing, or medical care
21 incurred in connection with the appearance of the inmate in the
22 court for any proceeding; and

23 (8) the cost of a special program that a court may
24 order a child to attend after a finding that the child committed an
25 offense, if ordered by the court (Art. 45.057, Code of Criminal
26 Procedure) . . . costs of the program not to exceed \$100.

27 SECTION 3.03. Section 101.161, Government Code, is amended

to read as follows:

Sec. 101.161. MUNICIPAL COURT FEES AND COSTS. The clerk of a municipal court shall collect:

(1) a fee for a hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court (Sec. 2308.457, Occupations Code [~~685.008, Transportation Code~~]) . . . \$20; and

(2) the cost of a special program that a court may order a child to attend after finding that the child committed an offense, if ordered by the court (Art. 45.057, Code of Criminal Procedure) . . . costs of the program not to exceed \$100.

SECTION 3.04. Section 2303.155(f), Occupations Code, is amended to read as follows:

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 2308 [~~Chapter 643, Transportation Code~~].

SECTION 3.05. Section 504.508(c), Transportation Code, is amended to read as follows:

(c) Proof of eligibility for license plates under this section must include a copy of the permit [~~registration~~] certificate issued by the Texas Department of Licensing and Regulation [~~department~~] for the tow truck.

SECTION 3.06. Section 643.002, Transportation Code, is amended to read as follows:

Sec. 643.002. EXEMPTIONS. This chapter does not apply to:

1 (1) a motor vehicle registered under the single state
2 registration system established under 49 U.S.C. Section 14504(c)
3 when operating exclusively in interstate or international
4 commerce;

5 (2) a motor vehicle registered as a cotton vehicle
6 under Section 502.277;

7 (3) a motor vehicle the department by rule exempts
8 because the vehicle is subject to comparable registration and a
9 comparable safety program administered by another governmental
10 entity;

11 (4) a motor vehicle used to transport passengers
12 operated by an entity whose primary function is not the
13 transportation of passengers, such as a vehicle operated by a
14 hotel, day-care center, public or private school, nursing home, or
15 similar organization;

16 (5) a vehicle operating under a private carrier permit
17 issued under Chapter 42, Alcoholic Beverage Code; ~~or~~

18 (6) a vehicle operated by a governmental entity; or

19 (7) a tow truck, as defined by Section 2308.002,
20 Occupations Code.

21 SECTION 3.07. Section 643.051(a), Transportation Code, is
22 amended to read as follows:

23 (a) A motor carrier may not operate a commercial motor
24 vehicle, as defined by Section 548.001, ~~[or a tow truck]~~ on a road
25 or highway of this state unless the carrier registers with the
26 department under this subchapter.

27 SECTION 3.08. Section 643.053, Transportation Code, is

1 amended to read as follows:

2 Sec. 643.053. FILING OF APPLICATION. An application under
3 Section 643.052 must be filed with the department and accompanied
4 by:

5 (1) an application fee of \$100 plus a \$10 fee for each
6 vehicle requiring registration [~~other than a tow truck or a \$25 fee~~
7 ~~for each tow truck the motor carrier proposes to operate~~];

8 (2) evidence of insurance or financial responsibility
9 as required by Section 643.103(a); and

10 (3) any insurance filing fee required under Section
11 643.103(c).

12 SECTION 3.09. Sections 643.057(a) and (d), Transportation
13 Code, are amended to read as follows:

14 (a) A motor carrier may not operate an additional vehicle
15 requiring registration unless the carrier pays a registration fee
16 of \$10 for each additional vehicle [~~other than a tow truck or \$25~~
17 ~~for each tow truck~~] and shows the department evidence of insurance
18 or financial responsibility for the vehicle in an amount at least
19 equal to the amount set by the department under Section 643.101.

20 (d) The department may not collect more than \$10 in
21 equipment registration fees for a vehicle [~~other than a tow truck~~]
22 registered under both this subchapter and Chapter 645 [~~or more than~~
23 ~~\$25 if the vehicle is a tow truck~~].

24 SECTION 3.10. Section 643.058(c), Transportation Code, is
25 amended to read as follows:

26 (c) A motor carrier may renew a registration under this
27 subchapter by:

1 (1) supplementing the application with any new
2 information required under Section 643.056;

3 (2) paying a \$10 fee for each vehicle requiring
4 registration [~~other than a tow truck or a fee of \$25 for each tow~~
5 ~~truck the carrier operates~~]; and

6 (3) providing the department evidence of continuing
7 insurance or financial responsibility in an amount at least equal
8 to the amount set by the department under Section 643.101.

9 SECTION 3.11. Section 643.061(b), Transportation Code, is
10 amended to read as follows:

11 (b) A motor carrier applying for registration under this
12 section must pay:

13 (1) a \$20 fee for each vehicle registered [~~other than a~~
14 ~~tow truck or a fee of \$50 for each tow truck~~] under Subsection
15 (a)(1);

16 (2) a \$10 fee for each vehicle registered [~~other than a~~
17 ~~tow truck or a fee of \$25 for each tow truck~~] under Subsection
18 (a)(2); and

19 (3) application and insurance filing fees the
20 department by rule adopts in an amount not to exceed \$100 each.

21 SECTION 3.12. Section 643.253(e), Transportation Code, is
22 amended to read as follows:

23 (e) An offense under Subsection (b) [~~or (d)~~] is a
24 misdemeanor punishable by a fine of not less than \$200 or more than
25 \$1,000 per violation.

26 SECTION 3.13. Section 1(1), Chapter 528, Acts of the 76th
27 Legislature, Regular Session, 1999 (Article 178d-1, Vernon's Texas

Civil Statutes), is amended to read as follows:

(1) "Parking facility," "parking facility owner," and "vehicle" have the meanings assigned by Section 2308.002, Occupations Code [~~684.001, Transportation Code~~].

ARTICLE 4. MISCELLANEOUS

SECTION 4.01. Section 683.012, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) In addition to the notice required under Subsection (a), if a law enforcement agency takes an abandoned motor vehicle into custody, the agency shall notify a person that files a theft report or similar report prepared by any law enforcement agency for the vehicle of that fact. The notice must be sent by regular mail on the next business day after the agency takes the vehicle into custody. The law enforcement agency shall also provide the name and address of the person that filed the theft report or similar report to the vehicle storage facility or governmental vehicle storage facility that is storing the vehicle.

ARTICLE 5. TRANSITION AND EFFECTIVE DATE

SECTION 5.01. (a) The following provisions of the Transportation Code are repealed:

- (1) Section 643.001(7);
- (2) Section 643.101(d);
- (3) Section 643.202;
- (4) Section 684.001;
- (5) Section 685.001;
- (6) the heading to Subchapter E, Chapter 643;
- (7) the heading to Chapter 684;

1 (8) the headings to Subchapters A, B, and F, Chapter
2 684; and

3 (9) the heading to Chapter 685.

4 (b) Subchapters E and F, Chapter 2303, Occupations Code, are
5 repealed.

6 SECTION 5.02. As soon as practicable after the effective
7 date of this Act, the presiding officer of the Texas Commission of
8 Licensing and Regulation shall make the initial appointments to the
9 Towing and Storage Advisory Board. The presiding officer shall
10 appoint two members to terms expiring February 1, 2009, three
11 members to terms expiring February 1, 2011, and three members to
12 terms expiring February 1, 2013.

13 SECTION 5.03. (a) As soon as practicable after the
14 effective date of this Act, the Texas Department of Transportation
15 and the Texas Department of Licensing and Regulation shall develop
16 and enter into a memorandum of understanding regarding the transfer
17 described in this section that includes a transition plan for
18 transferring the functions performed by the Texas Transportation
19 Commission and the Texas Department of Transportation that relate
20 to tow trucks, towing operations, or vehicle storage facilities to
21 the Texas Department of Licensing and Regulation. The transition
22 plan must include a timetable with specific steps and deadlines
23 needed to complete the transfer, and may include provisions for the
24 extension of expiration dates for licenses.

25 (b) In accordance with the transition plan developed by the
26 Texas Department of Transportation and the Texas Department of
27 Licensing and Regulation under Subsection (a) of this section, on

1 January 1, 2008:

2 (1) all functions and activities performed by the
3 Texas Transportation Commission and the Texas Department of
4 Transportation relating to tow trucks, towing operations, or
5 vehicle storage facilities immediately before that date are
6 transferred to the Texas Department of Licensing and Regulation;

7 (2) a rule or form adopted by the Texas Transportation
8 Commission and the Texas Department of Transportation that relates
9 to tow trucks, towing operations, or vehicle storage facilities is
10 a rule or form of the Texas Commission of Licensing and Regulation
11 or the Texas Department of Licensing and Regulation, as applicable,
12 and remains in effect until amended or replaced by that commission
13 or department;

14 (3) a reference in law to or an administrative rule of
15 the Texas Transportation Commission and the Texas Department of
16 Transportation that relates to tow trucks, towing operations, or
17 vehicle storage facilities means the Texas Commission of Licensing
18 and Regulation or the Texas Department of Licensing and Regulation,
19 as applicable;

20 (4) a complaint, investigation, or other proceeding
21 before the Texas Transportation Commission or the Texas Department
22 of Transportation that is related to tow trucks, towing operations,
23 or vehicle storage facilities is transferred without change in
24 status to the Texas Department of Licensing and Regulation, and the
25 Texas Department of Licensing and Regulation assumes, as
26 appropriate and without a change in status, the position of the
27 Texas Transportation Commission and the Texas Department of

1 Transportation in an action or proceeding to which the Texas
2 Transportation Commission or the Texas Department of
3 Transportation is a party;

4 (5) all full-time equivalent employee positions at the
5 Texas Department of Transportation that primarily concern the
6 administration of tow trucks, towing operations, or vehicle storage
7 facilities become positions at the Texas Department of Licensing
8 and Regulation, and when filling the positions, the Texas
9 Department of Licensing and Regulation shall give first
10 consideration to an applicant who, as of December 31, 2007, was a
11 full-time employee at the Texas Department of Transportation
12 primarily involved in administering tow trucks, towing operations,
13 or vehicle storage facilities;

14 (6) all money, contracts, leases, property, and
15 obligations of the Texas Department of Transportation related to
16 the regulation of tow trucks, towing operations, or vehicle storage
17 facilities are transferred to the Texas Department of Licensing and
18 Regulation;

19 (7) all property in the custody of the Texas
20 Department of Transportation related to tow trucks, towing
21 operations, or vehicle storage facilities is transferred to the
22 Texas Department of Licensing and Regulation; and

23 (8) the unexpended and unobligated balance of any
24 money appropriated by the legislature for the Texas Transportation
25 Commission and the Texas Department of Transportation related to
26 tow trucks, towing operations, or vehicle storage facilities is
27 transferred to the Texas Department of Licensing and Regulation.

1 (c) Before January 1, 2008, the Texas Department of
2 Transportation may agree with the Texas Department of Licensing and
3 Regulation to transfer any property of the Texas Department of
4 Transportation to the Texas Department of Licensing and Regulation
5 to implement the transfer required by this Act.

6 (d) In the period beginning with the effective date of this
7 Act and ending on December 31, 2007, the Texas Transportation
8 Commission and the Texas Department of Transportation shall
9 continue to perform functions and activities under Chapter 2303,
10 Occupations Code, and those portions of Chapters 643 and 684,
11 Transportation Code, that relate to tow trucks, towing operations,
12 or vehicle storage facilities, as if those laws were not amended by
13 this Act, and the former law is continued in effect for that
14 purpose.

15 SECTION 5.04. Not later than April 1, 2008, the Texas
16 Commission of Licensing and Regulation shall adopt rules relating
17 to an original application for a permit or license under Chapter
18 2303, Occupations Code, as amended by this Act, and Chapter 2308,
19 Occupations Code, as added by this Act.

20 SECTION 5.05. (a) Except as provided by Subsection (b) of
21 this section, this Act takes effect September 1, 2007.

22 (b) Section 2308.504, Occupations Code, as added by this
23 Act, and Subchapters C and D, Chapter 2308, Occupations Code, as
24 added by this Act, take effect September 1, 2008.

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No equivalent provision.

ARTICLE 1. LICENSING AND REGULATION OF
TOWING AND VEHICLE STORAGE

Same as Senate version.

No equivalent provision.

SECTION 1.01. Amends Sections 2303.002(2), (3), and
(4), Occupations Code.
(2) "Commission" means the Texas Commission of
Licensing and Regulation.
(3) "Department" means the Texas Department of
Licensing and Regulation.
(4) "Executive director" means the executive director of
the department.

Same as Senate version.

No equivalent provision.

SECTION 1.02. Section 2303.051, Occupations Code, is
amended to provide that the commission shall adopt a
rule that govern the administration of this chapter.

Same as Senate version.

No equivalent provision.

SECTION 1.03. Subchapter B, Chapter 2303,
Occupations Code, is amended by adding Sections
2303.055, 2303.056, 2303.057, and 2303.058 to read as
follows:
Sec. 2303.055. EXAMINATION OF CRIMINAL
CONVICTION. The department may conduct an
examination of any criminal conviction of an applicant,
including by obtaining any criminal history record
information permitted by law.
Sec. 2303.056. PERIODIC AND RISK-BASED
INSPECTIONS. (a) The department may enter and
inspect at any time during business hours:
(1) the place of business of any person regulated under
this chapter; or

Same as Senate version.

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(2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect a vehicle storage facility that holds a license under this chapter.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the vehicle storage facility;

(2) the inspection history of the vehicle storage facility;

(3) any history of violations involving the vehicle storage facility; and

(4) any other factor determined by the commission by rule.

(d) The vehicle storage facility shall pay a fee for each risk-based inspection performed under Subsection (c). The commission by rule shall set the amount of the fee.

Sec. 2303.057. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Sec. 2303.058. ADVISORY BOARD. The Towing and Storage Advisory Board under Chapter 2308 shall advise the commission in adopting vehicle storage rules under this chapter.

No equivalent provision.

SECTION 1.04. The heading to Section 2303.101, Occupations Code, is amended to read as follows:
Sec. 2303.101. FACILITY LICENSE REQUIRED.

Same as Senate version.

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No equivalent provision.

SECTION 1.05. Subchapter C, Chapter 2303, Occupations Code, is amended by adding Section 2303.1015 to read as follows:

Sec. 2303.1015. EMPLOYEE LICENSE REQUIRED.

(a) A person may not work at a vehicle storage facility unless the person holds a license issued under this chapter.

(b) The commission shall adopt rules governing the application for and issuance of a license under this section.

No equivalent provision.

SECTION 1.06. Sections 2303.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The commission by rule shall determine the types of information to be included in an application for a license under this chapter on a form prescribed by the executive director.

(b) The rules adopted ~~[by the commission]~~ under this section must require an [the] application for a facility license ~~[to be made under oath and]~~ to list:

(1) the name and address of each partner, if the applicant is a partnership; and

(2) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation ~~[: and~~

~~[(3) each conviction of a felony, or of a misdemeanor punishable by confinement in jail or by a fine exceeding \$200, that was obtained against the applicant or a partner or officer of the applicant in the three years preceding the date of application].~~

Same as Senate version.

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No equivalent provision.	SECTION 1.07. Section 2303.151(c), Occupations Code, is amended specify that it is a defense to an action initiated by the department for a violation of this section that the operator of the facility unsuccessfully attempted in writing <u>or electronically</u> to obtain information from the governmental entity with which the vehicle is registered.	Same as Senate version.
No equivalent provision.	SECTION 1.08. Section 2303.155(b), Occupations Code, is amended to provide that the operator of a vehicle storage facility or governmental vehicle storage facility may not charge a fee under Subsection (b) to the owner of a vehicle stored or parked at the facility as a result of recovery of the vehicle after being stolen if the vehicle owner provides the operator with a copy of the police report or similar report prepared by any law enforcement agency showing that the vehicle was reported stolen.	Same as Senate version.
No equivalent provision.	SECTION 1.09. Subchapter D, Chapter 2303, Occupations Code, is amended by adding Section 2303.160 to read as follows: <u>Sec. 2303.160. DRUG TESTING OF EMPLOYEES.</u> <u>(a) A license holder shall establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. A license holder that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted</u>	Same as Senate version.

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by the commission.

(b) The commission by rule shall adopt a model drug testing policy for use by license holders. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of a vehicle storage facility who has direct contact with the public; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

No equivalent provision.

SECTION 1.10. Section 2303.302, Occupations Code, is amended to stipulate that a person commits an offense if the person violates the licensing requirements of this chapter or employs an individual who does not hold an appropriate license required by this chapter. Establishes that an offense under this section is a Class C misdemeanor.

Same as Senate version.

No equivalent provision.

SECTION 1.11. Subchapter G, Chapter 2303, Occupations Code, is amended by adding Sections 2303.304 and 2303.305 to read as follows:

Sec. 2303.304. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

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(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2303.305. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

No equivalent provision.

SECTION 1.12. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2308 to read as follows:

CHAPTER 2308. VEHICLE TOWING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Texas Towing Act.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Towing and Storage Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a

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person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow.

(7) "Parking facility" means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

(A) a restricted space on a portion of an otherwise unrestricted parking facility; and

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

(i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(8) "Parking facility owner" means:

(A) an owner or operator of a parking facility, including

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a lessee, employee, or agent of an owner or operator;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or

(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

(9) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(10) "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

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(15) "Vehicle owner" means a person:
(A) named as the purchaser or transferee in the
certificate of title issued for the vehicle under Chapter
501, Transportation Code;
(B) in whose name the vehicle is registered under
Chapter 502, Transportation Code, or a member of the
person's immediate family;
(C) who holds the vehicle through a lease agreement;
(D) who is an unrecorded lienholder entitled to possess
the vehicle under the terms of a chattel mortgage; or
(E) who is a lienholder holding an affidavit of
repossession and entitled to repossess the vehicle.
(16) "Vehicle storage facility" means a vehicle storage
facility, as defined by Section 2303.002, that is operated
by a person who holds a license issued under Chapter
2303 to operate the facility.
Sec. 2308.003. STUDY OF NONCONSENT TOWING
FEES. (a) The department shall study the fees charged
by license and permit holders for nonconsent tows,
compliance of license and permit holders with local
regulations governing towing fees, and consumer
complaints related to fees for nonconsent tows. Not later
than January 1, 2009, the department shall report to the
legislature the findings of the study, including any
recommendations for state regulation of towing fees.
(b) This section expires September 1, 2009.
[Sections 2308.004-2308.050 reserved for expansion]
SUBCHAPTER B. ADVISORY BOARD
Sec. 2308.051. TOWING AND STORAGE
ADVISORY BOARD. (a) The advisory board consists

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of the following members appointed by the presiding officer of the commission with the approval of the commission:

(1) one representative of a towing company operating in a county with a population of less than one million;

(2) one representative of a towing company operating in a county with a population of one million or more;

(3) one owner of a vehicle storage facility located in a county with a population of less than one million;

(4) one owner of a vehicle storage facility located in a county with a population of one million or more;

(5) one parking facility owner;

(6) one law enforcement officer from a county with a population of less than one million;

(7) one law enforcement officer from a county with a population of one million or more; and

(8) one representative of property and casualty insurers who write automobile insurance in this state.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding

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officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2308.055. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 2308.057. RULES. (a) The commission shall adopt rules for permitting tow trucks and licensing towing operators and towing companies.

(b) The commission by rule shall adopt standards of conduct for license and permit holders under this chapter.

Sec. 2308.058. FEES. The commission shall establish and collect reasonable and necessary fees in amounts

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sufficient to cover the costs of administering this chapter.
Sec. 2308.059. PERIODIC AND RISK-BASED
INSPECTIONS. (a) The department may enter and
inspect at any time during business hours:
(1) the place of business of any person regulated under
this chapter; or
(2) any place in which the department has reasonable
cause to believe that a license or permit holder is in
violation of this chapter or in violation of a rule or order
of the commission or executive director.
(b) The department shall conduct additional inspections
based on a schedule of risk-based inspections using the
following criteria:
(1) the type and nature of the towing company or
operator;
(2) the inspection history;
(3) any history of complaints involving the towing
company or operator; and
(4) any other factor determined by the commission by
rule.
(c) The towing company shall pay a fee for each risk-
based inspection performed under this section. The
commission by rule shall set the amount of the fee.
(d) In conducting an inspection under this section, the
department may inspect a vehicle, a facility, business
records, or any other place or thing reasonably required
to enforce this chapter or a rule or order adopted under
this chapter.
Sec. 2308.060. POWERS AND DUTIES OF
ADVISORY BOARD. The advisory board shall provide

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advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, and continuing education requirements.

Sec. 2308.061. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

[Sections 2308.062-2308.100 reserved for expansion]

SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter. Each tow truck requires a separate permit.

Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant for a permit under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) evidence of insurance or financial responsibility required under this subchapter;

(3) the required fees; and

(4) any other information required by the executive director.

(b) The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

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Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT. (a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least \$500,000 of liability insurance for the tow truck; and

(3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) When a tow truck is used for a nonconsent tow initiated by a peace officer under Section 545.3051, Transportation Code, the permit holder is an agent of law enforcement and is subject to Section 545.3051(e), Transportation Code.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT. (a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-

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duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least \$300,000 of liability insurance for the tow truck; and

(3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and

(2) the applicant has at least \$300,000 of liability insurance for the tow truck.

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. (a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a

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single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Sec. 2308.107. PERMIT RENEWAL. (a) A permit issued under this chapter is valid for one year. The department may adopt a system under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

(1) paying a fee for each tow truck; and

(2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.

Sec. 2308.108. CAB CARDS. (a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

(1) show the permit number of the certificate issued under Section 2308.106(b);

(2) show the type of permit issued;

(3) show the vehicle unit number;

(4) show the vehicle identification number; and

(5) contain a statement that the vehicle has been issued a permit under this subchapter.

(b) The department shall issue a cab card when the department issues or renews a permit under this

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subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) If the department determines that the cab card system described by Subsections (a) through (c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A permit holder shall display on each permitted tow truck:

(1) the permit holder's name;

(2) the permit holder's telephone number;

(3) the city and state where the permit holder is located;
and

(4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both

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sides of the tow truck.

Sec. 2308.110. FINANCIAL RESPONSIBILITY. (a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from an insurer authorized to do business in this state.

(c) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter.

(d) A permit holder shall keep evidence of insurance in a form approved by the department in the cab of each permitted tow truck.

[Sections 2308.111-2308.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. LICENSE REQUIRED. Unless the person holds an appropriate license under this subchapter, a person may not:

(1) perform towing operations; or

(2) operate a towing company.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a license under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) the required fees; and

(3) any other information required by commission rule.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING

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OPERATOR'S LICENSE. (a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must:

(1) be a licensed Texas driver; and

(2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE. (a) A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

(1) be a licensed Texas driver; and

(2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A consent towing operator's license is required to operate a tow truck permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must be a licensed Texas driver.

Sec. 2308.156. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

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Sec. 2308.157. CONTINUING EDUCATION. (a) The commission by rule shall recognize, prepare, or administer continuing education programs for license holders. Except as provided by Subsection (c), each license holder must complete a continuing education program before the license holder may renew the license holder's license.

(b) A person recognized by the commission to offer a continuing education program must:

(1) register with the department; and

(2) comply with rules adopted by the commission relating to continuing education.

(c) To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to towing that is licensed or certified by the National Safety Council or another course approved and administered by the department under this section.

Sec. 2308.158. DRUG TESTING OF TOWING OPERATORS. (a) A towing company shall establish a drug testing policy for towing operators. A towing company that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model drug testing policy for use by a towing company. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to

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protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced drug testing for towing operators.

Sec. 2308.159. LICENSE RENEWAL. (a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

(1) paying a renewal fee; and

(2) completing continuing education as required by Section 2308.157.

No equivalent provision.

ARTICLE 2. CONSOLIDATION OF LAWS
RELATED TO TOWING

Same as Senate version.

No equivalent provision.

SECTION 2.01. Sections 643.201 and 643.203 through 643.208, Transportation Code, are transferred to Chapter 2308, Occupations Code, designated as Subchapter E, Chapter 2308, Occupations Code, renumbered as Sections 2308.201 through 2308.207, Occupations Code. Added Sec. 2308.202 provides that the governing body

Same as Senate version except Section 2308.202 provides that the governing body of a political subdivision *may* regulate the fees.

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	of a political subdivision <i>shall</i> regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.	
No equivalent provision.	SECTION 2.02. Section 684.101, Transportation Code, is transferred to Subchapter E, Chapter 2308, Occupations Code, and renumbered as Section 2308.208, Occupations Code.	Same as Senate version.
No equivalent provision.	SECTION 2.03. Sections 684.011, 684.012, 684.0125, 684.013, 684.014, and 684.015, Transportation Code, are transferred to Chapter 2308, Occupations Code, designated as Subchapter F, Chapter 2308, Transportation Code, renumbered as Sections 2308.251 through 2308.256, Occupations Code.	Same as Senate version.
No equivalent provision.	SECTION 2.04. Subchapter C, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, and redesignated as Subchapter G, Chapter 2308, Occupations Code, and Sections 684.031 through 684.035, Transportation Code, are renumbered as Sections 2308.301 through 2308.305, Occupations Code.	Same as Senate version.
No equivalent provision.	SECTION 2.05. Subchapter D, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, and redesignated as Subchapter H, Chapter 2308, Occupations Code, and Sections 684.051 through 684.054, Transportation Code, are renumbered	Same as Senate version.

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No equivalent provision.

as Sections 2308.351 through 2308.354, Occupations Code.

SECTION 2.06. Subchapter E, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, and redesignated as Subchapter I, Chapter 2308, Occupations Code, and Sections 684.081 through 684.087, Transportation Code, are renumbered as Sections 2308.401 through 2308.407, Occupations Code.

Same as Senate version.

SECTION 1. Section 685.007(b), Transportation Code, is amended to read as follows:

SECTION 2.07. Sections 685.002 through 685.010, Transportation Code, are transferred to Chapter 2308, Occupations Code, designated as Subchapter J, Chapter 2308, Occupations Code, renumbered as Sections 2308.451 through 2308.459, Occupations Code, and amended to read as follows:

Same as Senate version.

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED VEHICLES

Sec. 2308.451 [~~685.002~~]. PAYMENT OF COST OF REMOVAL AND STORAGE OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage

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in a vehicle storage facility of a vehicle, the person or law enforcement agency that authorized the removal shall:

- (1) pay the costs of the removal and storage; or
- (2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

Sec. 2308.452 ~~[685.003]~~. **RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING.** The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement.

Sec. 2308.453 ~~[685.004]~~. **JURISDICTION.** A hearing under this chapter shall be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.

Sec. 2308.454 ~~[685.005]~~. **NOTICE TO VEHICLE OWNER OR OPERATOR.** (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, ~~[Occupations Code,]~~ shall include with that notice a notice of the person's rights under this chapter.

Sec. 2308.455 ~~[685.006]~~. **CONTENTS OF NOTICE.**

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The notice under Section 2308.454 [~~685.005~~] must include:

- (1) a statement of:
 - (A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove the vehicle;
 - (B) the information that a request for a hearing must contain; and
 - (C) any filing fee for the hearing;
- (2) the name, address, and telephone number of the towing company that removed the vehicle;
- (3) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;
- (4) the name, address, and telephone number of the person, property owner, or law enforcement agency that authorized the removal of the vehicle; and
- (5) the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.

Sec. 2308.456 [~~685.007~~]. REQUEST FOR HEARING.

(a) Except as provided by Subsection (c), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

- (1) the name, address, and telephone number of the owner or operator of the vehicle;

(b) A request for a hearing must contain:

- (1) the name, address, and telephone number of the owner or operator of the vehicle;

Same as Senate version.

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<p>(2) the location from which the vehicle was removed;</p> <p>(3) the date when the vehicle was removed;</p> <p>(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal;</p> <p>(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;</p> <p>(6) the name, address, and telephone number of the towing company that removed the vehicle;</p> <p>(7) a copy of any receipt or notification that the owner or operator received from the towing company or the vehicle storage facility; and</p> <p>(8) if the vehicle was removed from a parking facility:</p> <p>(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or</p> <p>(B) a statement that no sign restricting parking was posted at the parking facility; <u>and</u></p> <p><u>(9) a statement explaining each reason why the owner or operator of the vehicle believes no probable cause existed to remove the vehicle.</u></p>	<p>(2) the location from which the vehicle was removed;</p> <p>(3) the date when the vehicle was removed;</p> <p>(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal;</p> <p>(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;</p> <p>(6) the name, address, and telephone number of the towing company that removed the vehicle;</p> <p>(7) a copy of any receipt or notification that the owner or operator received from the towing company or the vehicle storage facility; and</p> <p>(8) if the vehicle was removed from a parking facility:</p> <p>(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or</p> <p>(B) a statement that no sign restricting parking was posted at the parking facility.</p>	
No equivalent provision.	<p>(c) If notice was not given under Section <u>2308.454</u> [685.005], the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.</p>	Same as Senate version.
No equivalent provision.	<p>(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.</p>	Same as Senate version.

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Sec. 2308.457 [~~685.008~~]. FILING FEE AUTHORIZED.
The court may charge a filing fee of \$20 for a hearing under this chapter.

SECTION 2. Sections 685.009(a), (b), and (e), Transportation Code, are amended to read as follows:

(a) A hearing under this chapter shall be held before the 14th [~~10th~~] working day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing, ~~and~~ the person or law enforcement agency that authorized the removal of the vehicle, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure [~~by registered or certified mail~~]. The notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle shall include a copy of the request for hearing.

SECTION 2.07. Sec. 2308.458 [~~685.009~~]. HEARING.

Same as Senate version.

(a) A hearing under this chapter shall be held before the 14th [~~10th~~] working day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing, ~~and~~ the person or law enforcement agency that authorized the removal of the vehicle, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure [~~by registered or certified mail~~]. The notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle shall include a copy of the request for hearing.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(c) The issues in a hearing under this chapter are:

(1) whether probable cause existed for the removal and placement of the vehicle;

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political

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subdivision under Section 2308.201 ~~[643.201]~~ or 2308.202 ~~[643.203]~~;

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203 ~~[643.204]~~ or 2308.204 ~~[643.205]~~; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount filed with the department under Section 2308.206 ~~[643.207]~~.

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) ~~[685.007(b)(8)]~~ to a vehicle owner or operator who is the prevailing party; ~~and~~

(3) an amount equal to the amount that the towing charge exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; and

(4) reimbursement of fees paid for vehicle towing and storage ~~[, Occupations Code]~~.

Sec. 2308.459 ~~[685.010]~~. APPEAL. An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

SECTION 2.08. Same as the House version except specifies for the enforcement of judgment for *a debt*.

Same as Senate version.

(e) The court may award:

(1) court costs to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 685.007(b)(8) to a vehicle owner or operator who is the prevailing party; ~~and~~

(3) an amount equal to the amount that the towing charge exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303, Occupations Code; and

(4) reimbursement of fees paid for vehicle towing and storage.

SECTION 3. Chapter 685, Transportation Code, is amended by adding Section 685.011 to provide that an

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award under this chapter may be enforced by any means available for the enforcement of judgment for *debts*.

No equivalent provision.

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SECTION 2.09. Chapter 2308, Occupations Code, is amended by adding Subchapter K to read as follows:
SUBCHAPTER K. ENFORCEMENT
Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:
(1) this chapter or a rule adopted under this chapter; or
(2) a rule or order of the executive director or commission.
(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.
Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.
(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.
Sec. 2308.503. SANCTIONS. The department may impose sanctions as provided by Section 51.353.
Sec. 2308.504. CRIMINAL PENALTY; LICENSING.

Same as Senate version.

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	<p><u>(a) A person commits an offense if the person:</u> <u>(1) violates the permitting or licensing requirements of this chapter;</u> <u>(2) performs towing without a license to perform towing in this state;</u> <u>(3) employs an individual who does not hold the appropriate license required by this chapter; or</u> <u>(4) falsifies a certification or training.</u> <u>(b) An offense under this section is a Class C misdemeanor.</u></p>	
No equivalent provision.	SECTION 2.10. Section 643.253(d), Transportation Code, is transferred to Subchapter K, Chapter 2308, Occupations Code, renumbered as Section 2308.505, Occupations Code, and amended. Among other provisions, establishes that an offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation. Makes conforming changes.	Same as Senate version.
No equivalent provision.	ARTICLE 3. CONFORMING AMENDMENTS	Same as Senate version.
No equivalent provision.	SECTION 3.01-3.13.	Same as Senate version.
No equivalent provision.	No equivalent provision.	ARTICLE 4. MISCELLANEOUS
No equivalent provision.	No equivalent provision.	SECTION 4.01. Section 683.012, Transportation Code, is amended by adding Subsection (f) to read as follows: <u>(f) In addition to the notice required under Subsection (a), if a law enforcement agency takes an abandoned</u>

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motor vehicle into custody, the agency shall notify a person that files a theft report or similar report prepared by any law enforcement agency for the vehicle of that fact. The notice must be sent by regular mail on the next business day after the agency takes the vehicle into custody. The law enforcement agency shall also provide the name and address of the person that filed the theft report or similar report to the vehicle storage facility or governmental vehicle storage facility that is storing the vehicle.

No equivalent provision.

ARTICLE 4. TRANSITION AND EFFECTIVE DATE

ARTICLE 5. Same as Senate version.

No equivalent provision.

SECTION 4.01-4.04.

Same as Senate version.

SECTION 4. Saving provision.

No equivalent provision.

Same as Senate version.

SECTION 5. Effective date.

SECTION 4.05. Same as House version except Section 2308.504, Occupations Code, as added by this Act, and Subchapters C and D, Chapter 2308, Occupations Code, as added by this Act, take effect September 1, 2008.

Same as Senate version.